ASSEMBLY BILL   No. 197

Introduced by Assembly Member Monning

January 27, 2011

An act to amend Section 1194.2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 197, as amended, Monning. Recovery of wages: liquidated damages.

Under existing law, in a court action to recover wages unpaid in violation of the minimum wage set by the Industrial Welfare Commission within the Department of Industrial Relations, the court may award liquidated damages to an employee equal to the amount of wages unlawfully unpaid, plus interest.

This bill would increase the amount of liquidated damages that may be awarded to an employee to twice the amount of the wages unlawfully unpaid, plus interest.

This bill would incorporate additional changes in Section 1194.2 of the Labor Code proposed by AB 240, to be operative only if AB 240 and this bill are both enacted and become effective on or before January 1, 2012, both bills amend Section 1194.2, and this bill is enacted after AB 240.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1   SECTION 1. Section 1194.2 of the Labor Code is amended to
2 read:
3   1194.2. (a) In any action under Section 1193.6 or Section 1194
4 to recover wages because of the payment of a wage less than the
5 minimum wage fixed by an order of the commission, an employee
6 shall be entitled to recover liquidated damages in an amount equal
7 to twice the wages unlawfully unpaid and interest thereon. Nothing
8 in this subdivision shall be construed to authorize the recovery of
9 liquidated damages for failure to pay overtime compensation.
10   (b) Notwithstanding   subdivision   (a),   if   the   employer
11 demonstrates to the satisfaction of the court that the act or omission
12 giving rise to the action was in good faith and that the employer
13 had reasonable grounds for believing that the act or omission was
14 not a violation of any provision of the Labor Code relating to
15 minimum wage, or an order of the commission, the court may, in
16 its discretion, refuse to award liquidated damages or award any
17 amount of liquidated damages not exceeding the amount specified
18 in subdivision (a).
19   (c) This section only applies to civil actions commenced on or
20 after January 1, 1992.
21   *SEC. 1.5. Section 1194.2 of the Labor Code is amended to*
22 *read:*
23   1194.2. (a) In any action under Section *98,* 1193.6*,* or ~~Section~~
24 1194 to recover wages because of the payment of a wage less than
25 the minimum wage fixed by an order of the commission *or by*
26 *statute*, an employee shall be entitled to recover liquidated damages
27 in an amount equal to *twice* the wages unlawfully unpaid and
28 interest thereon. Nothing in this subdivision shall be construed to
29 authorize the recovery of liquidated damages for failure to pay
30 overtime compensation.
31   (b) Notwithstanding   subdivision   (a),   if   the   employer
32 demonstrates to the satisfaction of the court *or the Labor*
33 *Commissioner* that the act or omission giving rise to the action
34 was in good faith and that the employer had reasonable grounds
35 for believing that the act or omission was not a violation of any
36 provision of the Labor Code relating to minimum wage, or an order
37 of the commission, the court *or the Labor Commissioner* may, ~~in~~
38 ~~its~~ *as a matter of* discretion, refuse to award liquidated damages

1 or award any amount of liquidated damages not exceeding the
2 amount specified in subdivision (a).
3   (c) This section *applies* only ~~shall apply~~ to civil actions
4 commenced on or after January 1, 1992.
5   *SEC. 2. Section 1.5 of this bill incorporates amendments to*
6 *Section 1194.2 of the Labor Code proposed by both this bill and*
7 *AB 240. It shall only become operative if (1) both bills are enacted*
8 *and become effective on or before January 1, 2012, (2) each bill*
9 *amends Section 1194.2 of the Labor Code, and (3) this bill is*
10 *enacted after AB 240, in which case Section 1 of this bill shall not*
11 *become operative.*

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